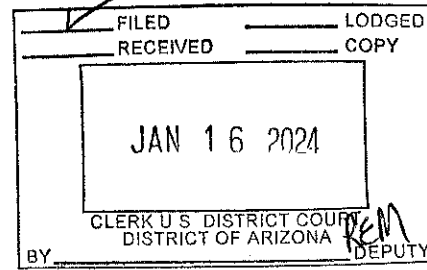


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7 **IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA**
8
9 **IN AND FOR THE COUNTY OF PIMA**

10 Mark William Kelly,

Case No.: CV-24-00001-JCH(PSOT)

11 Plaintiff,

12 VS

AMENDED COMPLAINT

13 Pima County Sheriffs Department, Deputy
14 Gina M. Lumia (Badge #7532), Supervisor
15 Guy A. Marchal (Badge #5804), and James
16 Hinkle, Desert Earth Contractors, Richmond
American Construction, Defendants

17 **COMPLAINT**

18 **JURISDICTION AND VENUE:**

- 19 1. This action arises under the laws of the United States and falls within the jurisdiction of
20 this Honorable Court pursuant to 28 U.S. Code § 1331, which grants federal courts
21 original jurisdiction over civil actions arising under the Constitution and laws of the
22 United States.
- 23 2. Venue is proper in this district pursuant to 28 U.S. Code § 1391(b)(2), as a substantial
24 part of the events giving rise to the claims occurred in this district and the Defendants
25 reside, can be found, or conduct substantial business within this district.

26 **RELEVANT U.S. CODES PERTAINING TO CIVIL RIGHT VIOLATIONS:**

- 27 1. 42 U.S. Code § 1983: Violation of rights under the color of state law.
28 2. 42 U.S. Code § 1985: Conspiracy to interfere with civil rights.

- 1 3. 18 U.S. Code § 241: Conspiracy against rights.
- 2 4. 18 U.S. Code § 242: Deprivation of rights under color of law.
- 3 5. 14th Amendment: Equal Protection and Due Process Clauses.

4 **NATURE OF ACTION AND FACTUAL ALLEGATIONS:**

5 **Richmond American Const. (Developer) and Desert Earth Contractors (Contractor):**

- 6 1. In conjunction with the incident, it is crucial to note that the developer, Richmond
7 American Construction, knowingly placed "No Trespassing" signs in the public easement
8 where Plaintiff was lawfully present on several occasions filming.
- 9 2. Richmond American Construction had, on previous occasions, trespassed Mark W. Kelly
10 from a public sidewalk within the new development they were working on.
- 11 3. The contractor, Desert Earth Contractors, employed James Hinkle, the construction
12 worker who confronted Mark W. Kelly. This contractor was aware of and participated in
13 the actions that violated Mark W. Kelly's rights.
- 14 4. Both Richmond American Construction and Desert Earth Contractors engaged in actions
15 that aimed to restrict Mark W. Kelly's lawful activities in public spaces by erecting "No
16 Trespassing" signs and making false accusations to law enforcement.

17 **False Accusations to the Sheriff Department:**

- 18 1. Subsequent to the incident, Richmond American Construction and Desert Earth
19 Contracting falsely accused Mark W. Kelly of harassing workers and trespassing on the
20 construction site.
- 21 2. The contractor, James Hinkle, knowingly provided misinformation to the Sheriff
22 Department, falsely claiming harassment and trespassing by Mark W. Kelly.
- 23 3. These false accusations were made with the intent to manipulate law enforcement and
24 resulted in the unwarranted arrival of Sheriff Deputies, including Deputy Gina Lumia,
25 Deputy Yepiz R. Alcaarez, Deputy Trevor Tuminello, and Supervisor Guy Marchal.

26 **Law Enforcement Response:**

- 27 1. Defendants Deputy Gina Lumia, Deputy Yepiz R. Alcaarez, Deputy Trevor Tuminello, and
28 Supervisor Guy Marchal, employees of the Sheriff's Department, responded to the scene
based on these false accusations.

2. Despite a lack of evidence supporting the alleged wrongdoing, Plaintiff was forcibly removed from their vehicle, arrested without probable cause, and subjected to excessive force, leading to permanent nerve damage due to the excessively tight application of handcuffs.

Violation of Constitutional Rights:

1. The actions of the Defendants, including the false accusations, unwarranted arrest, excessive use of force, and subsequent mistreatment at the jail, violated Plaintiff's constitutional rights under the Fourth and First Amendments.
2. Defendants' conduct, acting under color of state law, also deprived Plaintiff of their constitutional rights guaranteed by the 14th Amendment, particularly the Equal Protection Clause, resulting in unjust and differential treatment without any justifiable or rational basis.

Live Streaming Evidence:

1. Throughout the entire incident, Plaintiff was live-streaming the encounter on the internet, providing real-time evidence of the events.
2. This live stream serves to corroborate Plaintiff's account, substantiating the unwarranted actions and constitutional violations committed by the Defendants.
3. The Plaintiff, Mark William Kelly, a law-abiding citizen, was peacefully recording in a public easement from their vehicle when confronted by Construction Worker James Hinkle without any lawful basis or justification on or about January 18th, 2022.
4. Following the arrest, Plaintiff was subjected to further unlawful treatment at the jail, including strip-searching, fingerprinting, and a forced COVID test, conducted without proper legal grounds. Plaintiff was unjustly held against their will for several hours, leading to false imprisonment.
5. Despite Supervisor Marchal's prior knowledge of Plaintiff's lawful recording activities and the underlying reasons, Defendants subjected Plaintiff to unwarranted arrest,

CLAIMS FOR RELIEF:

1. Violation of Fourth Amendment rights against unreasonable search and seizure.
2. Violation of First Amendment rights through retaliation for protected activity.
3. Excessive use of force resulting in injury, violating Plaintiff's civil rights.
4. False imprisonment and unlawful detention without legal basis.
5. Conspiracy to interfere with civil rights.
6. Deprivation of rights under color of law.
7. Violation of the 14th Amendment's Equal Protection and Due Process Clauses.

PRAYER FOR RELIEF:

1. Compensatory damages in the amount of \$5,000,000 for physical injury, emotional distress, humiliation, and violation of constitutional rights.
2. Punitive damages against Defendants due to their egregious and willful conduct.
3. Declaratory relief affirming Plaintiff's rights and preventing future violations.
4. Injunctive relief ensuring proper training and oversight within the Sheriffs Department to prevent similar incidents.
5. Attorneys' fees and costs incurred in pursuing this action.

JURY DEMAND:

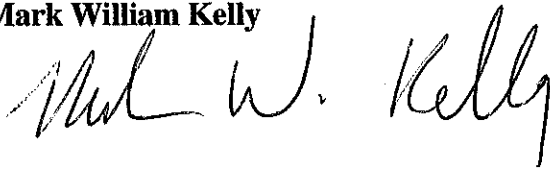
Plaintiff demands a trial by jury on all claims so triable.

CONCLUSION:

Wherefore, Plaintiff Mark W. Kelly respectfully requests this Honorable Court to award the relief sought herein and any other relief deemed just and proper by this Court.

Respectfully Submitted,

Mark William Kelly



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1 mark@kmaes.com

2 **ORIGINAL** of the foregoing e-filed

3 this 2nd day of January 2024 with:

4 Clerk of the Court:

5 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

6 IN THE COUNTY OF PIMA

7
8 **COPY** of the forgoing to be served to:

9 Defendants on or about January 18th, 2024